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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/761,701

01/21/2004

C. Allen Brown

23060-RA

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09/23/2004

MYERS & KAPLAN, INTELLECTUAL PROPERTY LAW, L.L.C.  
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SUITE 310  
ATLANTA, GA 30339

EXAMINER

COHEN, AMY R

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/761,701

Applicant(s)

BROWN, C. ALLEN

Examiner

Amy R Cohen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/10/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the circumference of 12 inches, 19 2/10 inches, and 24 inches must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-14, 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kelley (U. S. Patent No. 2,495,974).

Kelley teaches an apparatus (Fig. 1) for measuring distances, said apparatus comprising: a wheel (3, 5) comprising incremental line markers for measuring distances (Figs. 5, 6, 8, 9); and a housing (1) that functions as a layout tool (Fig. 1), said layout tool selected from a group consisting of a straight edge, a gauging block, a ruler, or a combination thereof (Col 1, lines 5-19).

Kelley teaches the apparatus wherein said wheel comprises a circumference, said circumference selected from a group consisting of a 12-inch circumference (Figs. 8 and 9), a 16-inch circumference, a nineteen and two-tenths-inch circumference, and a 24-inch circumference (Col 4, lines 5-21).

Kelley teaches the apparatus wherein said housing further functions as a gauging block (Col 1, lines 5-19).

Kelley teaches the apparatus wherein said housing comprises a sidewall (11), said sidewall comprising measuring notches (45) for measuring linear distances (Fig. 1).

Kelley teaches the apparatus wherein said housing comprises a sidewall (11) comprising a length (45), said length selected from a group consisting of 1 ½ inches, 3 inches, 3 ½ inches, and 5 inches (Fig. 1).

Kelley teaches the apparatus wherein said housing comprises a first sidewall adjacently disposed to a second sidewall at an angle selected from a group consisting of 45 degrees and 90 degrees (Col 1, lines 5-45 and Col 3, lines 5-19).

Kelley teaches an apparatus (Fig. 1) for measuring distances, said apparatus comprising: a wheel (3, 5) comprising incremental line markers (Figs. 5, 6, 8, 9) for measuring distances; and a housing (1) comprising edges dimensioned and configured to correspond to the sizes and angles most often encountered during framing (Col 1, lines 5-45 and Col 3, lines 5-19).

Kelley teaches a method for measuring distances, said method comprising the step of: obtaining an apparatus for measuring distances, said apparatus comprising a wheel comprising incremental line markers for measuring distances, and a housing that functions as a straight edge (Figs. 1, 5, 6, 8, 9, Col 1, lines 5-45 and Col 3, lines 5-19).

Kelley teaches the method comprising the step of placing said wheel on a starting point on a surface requiring measurement, and rolling said wheel over the surface (Col 1, line 42-Col 2, line 16 and Col 4, lines 52-71).

Kelley teaches the method comprising the step of determining the distance traveled by said wheel from the starting point, wherein the distance is ascertained by said incremental line markers on said wheel (Col 1, line 42-Col 2, line 16 and Col 4, line 52-Col 5, line 19).

Kelley teaches the method comprising the step of utilizing said housing to measure to sizes and angles most often encountered during framing (Col 1, line 42-Col 2, line 16 and Col 4, line 52-Col 5, line 19).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley in view of Pearson (U. S. Patent No. 3,046,884).

Kelley discloses the apparatus and method as described above in paragraph 3 and wherein interval distances are indicated by an audible sound and by said incremental line markers on said wheel (Col 1, line 42-Col 2, line 16 and Col 4, line 52-Col 5, line 19).

Kelley does not disclose the apparatus and method specifically comprising the step of marking the surface at selected intervals indicated by said incremental line markers on said wheel.

Pearson discloses an apparatus and method specifically comprising the step of marking the surface at selected intervals indicated by said incremental line markers on said wheel (Figs. 1 and 4 and Col 1, lines 7-61).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the apparatus and method of Kelley to include marking distances at the selected intervals, so that a user would be able to easily recall the number of times the incremental line markers on the wheel made a revolution, in order to more easily indicate the total distance traveled.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents disclose measuring devices Szumer (U. S. Patent No. 6,553,677), Hodges (U. S. Patent No. 6,408,529), Kuze et al. (U. S. Patent No. 4,965,944), Hiscott (U. S. Patent No. 4,170,065), Preseley (U. S. Patent No. 3,163,941), Reinking (U. S. Patent No. 2,771,681), Bennett (U. S. Patent No. 2,230,990), Cramer (U. S. Patent No.

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2,204,927), Anderson (U. S. Patent No. 1,986,551), Ifkowitz (U. S. Patent No. 1,083,684), Davenport (U. S. Patent No. 925,082), and Stoner (U. S. Patent No. 361,791).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy R Cohen whose telephone number is (571) 272-2238. The examiner can normally be reached on 8 am - 5 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ARC  
September 20, 2004



Diego Gutierrez  
Supervisory Examiner  
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